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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-608

W. PETER CAREY, *et al.*,
Petitioners,
v.
J. J. O'DONNELL, President of Air Line Pilots Association, *et al.*,
Respondents

GEORGE S. CHAUDOIN, *et al.*,
Petitioners,
v.
AIR LINE PILOTS ASSOCIATION, *et al.*,
Respondents

BRIEF FOR RESPONDENT DELTA AIR LINES, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Respondent Delta Air Lines, Inc. (Delta), believes that petitioners' statement of the question presented is incomplete and accordingly restates the question as follows:

Did the Court of Appeals err in holding that the District Court had no jurisdiction over the subject matter of these cases which, although couched in terms of violations of federal statutes, are essentially collateral attacks upon an order of the Civil Aeronautics Board dismissing objections to an integrated seniority list arising out of an airline merger over which the Civil Aeronautics Board and the Courts of Appeals have exclusive jurisdiction pursuant to the Federal Aviation Act of 1958?

STATUTES INVOLVED

The petitioners have failed to cite the most important statute involved in these cases as decided below, *i.e.*, the Federal Aviation Act of 1958, 49 U.S.C. §§ 1378 and 1486. Section 1378 gives the Civil Aeronautics Board (CAB or Board) jurisdiction over airline mergers and § 1486 confers exclusive jurisdiction to review orders of the Board upon the Courts of Appeals.

STATEMENT OF THE CASE

Delta accepts as generally correct petitioners' Statement of the Case concerning the court proceedings to date. The section of the statement which petitioner calls "Background", however, omits several important points. For a comprehensive statement of the case, Delta calls the Court's attention to the opinion of the Court of Appeals in these cases[1] and, of equal importance, the opinion of the Court of Appeals in *Northeast Master Executive Council* v. *Civil Aeronautics Board*, which is a closely related case decided on the same day as these cases.[2] Each of the opinions of the Court of Appeals

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[1] See Appendix A to the petition, beginning at p. 1a.

[2] A copy of that opinion is appended to the Petition for a Writ of Certiorari in case No. 74-610, filed in this Court concurrently with the filing of the petition in these cases.

refers to the other and the opinions must be read together for a complete understanding of the proceedings below.

Briefly summarized, these cases arise out of the labor protective provisions imposed by the CAB in connection with its approval of the merger of Northeast Airlines, Inc., into Delta in 1972. As a part of its labor protective provisions, the CAB required, as it has in all airline mergers in recent history, that seniority lists be integrated in a "fair and equitable manner." This was accomplished through invocation of the traditional internal procedures of the Air Line Pilots Association (ALPA), the union which represented the pilots of both carriers.

Pursuant to these procedures, each pilot group elected two representatives to negotiate an integrated seniority list and, after extended negotiations, a list was agreed to and subsequently accepted by Delta. Some of the Northeast pilots objected to the list and sought to repudiate it, first through ALPA, then through a suit in the District Court, then through the CAB and finally through the cases now before this Court. ALPA rejected these attempts at repudiation pointing out that the applicable procedures had been followed; the District Court rejected a request to enjoin implementation of the list on the grounds that the matter was within the exclusive jurisdiction of the CAB,[3] and the CAB carefully reviewed the objections to the list and dismissed them on the grounds that the list was negotiated in accordance with normal procedures and that there was no allegation (much less proof) of any bad faith whatsoever. The dissatisfied pilots then brought these suits in the District Court alleging violations of the Railway Labor Act in the *Carey*

[3] *Northeast Pilots MEC* v. *O'Donnell and ALPA*, Civil Action No. 1911-72 (D.D.C., October 4, 1972), 69 CCH Labor Cases ¶ 13,200.

case and of the Age Discrimination in Employment Act (ADEA) in the *Chaudoin* case.

The District Court dismissed the complaints on the basis of exclusive jurisdiction of the CAB, collateral estoppel and *res judicata*. The Court of Appeals affirmed on the basis of exclusive jurisdiction, pointing out that the sole remedy in the courts in connection with matters arising out of an airline merger is through review of orders of the CAB in the Courts of Appeals. In a companion decision, the Court of Appeals also upheld the CAB's order dismissing objections to the integrated seniority list.

REASONS FOR DENYING THE WRIT

This Court should deny the petitioners' request for a writ of certiorari because these cases most clearly do not fall within the Court's guidelines governing review on certiorari. (See this Court's Rule 19.) The petitioners do not present any special or important reasons for granting the writ; they are merely dissatisfied with the result below.

There are no conflicts with the decisions of other Courts of Appeals and, indeed, the decisions below follow and are consistent with the decisions of other Circuits on the points in question, one of which this Court has declined to review on certiorari.[4] Moreover, there are no novel or unusual questions which require the attention of this Court. Petitioners have merely attempted in these cases to challenge an order of the CAB with respect to integration of seniority lists by attaching different labels to their challenges and attempting to proceed under various federal statutes. The courts below correctly found

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[4] *Oling* v. *Air Line Pilots Ass'n*, 346 F.2d 270 (7th Cir. 1965), *cert. den'd*, 382 U.S. 926 (1965); *Kesinger* v. *Universal Airlines, Inc.*, 474 F.2d 1127 (6th Cir. 1973).

that these challenges must fail because of the exclusive jurisdiction of the CAB and the Courts of Appeals under the Federal Aviation Act of 1958, 49 U.S.C. §§ 1378 and 1486.

ARGUMENT

Petitioners do not present *any* substantive questions of law, but base their request for a writ of certiorari solely upon a jurisdictional question. At page 7 of their petition they say:

> "The petitioners here do not submit on the merits but on the denial of a forum on a jurisdictional basis when the statutory right is clear."

Thus, the petitioners have limited their case to the narrow question of whether the Court of Appeals properly concluded that exclusive jurisdiction of the petitioners' claims is in the CAB and, on review, in the Courts of Appeals.

Petitioners cite a number of cases in support of the general proposition that district courts have jurisdiction over disputes arising under the Railway Labor Act, the ADEA and other federal statutes. Delta does not dispute the validity of those cases, but they are not apposite here because of the circumstances out of which the instant cases arise.

While petitioners nominally have pleaded violations of the Railway Labor Act and the ADEA, it is not disputed by petitioners (and the complaints show) that the basis of the action in both cases is the integrated seniority list required by the CAB as a condition to its approval of the Delta-Northeast merger.[5] This being so, the ques-

[5] Aside from the fact that the complaints in these cases in actuality are collateral attacks upon an order of the CAB, the ADEA specifically provides that it shall not be unlawful to observe the terms of a bona fide seniority system. 29 U.S.C. § 623 (f)(2).

tion is whether petitioners may be allowed to challenge the integrated list in numerous forums on as many bases as they may find statutes to provide labels, or must they present all of their claims to the CAB, subject to review in the Courts of Appeals. The answer is found in the Federal Aviation Act, 49 U.S.C. §§ 1378 and 1486, and in the uniform decisions of the Courts of Appeals and District Courts across the nation. *Oling* v. *Air Line Pilots Ass'n*, 346 F.2d 270 (7th Cir. 1965), *cert. den'd*, 382 U.S. 926 (1965) *Kesinger* v. *Universal Airlines, Inc.*, 474 F.2d 1137 (6th Cir. 1973); *Holman* v. *Southern Airways, Inc.*, 210 F. Supp. 407 (N.D. Ga. 1962); *Hyland* v. *United Air Lines, Inc.*, 254 F. Supp. 367 (N.D. Ill., 1966).

The *Oling* case was quite similar to the instant cases in that it involved the integration of a pilots seniority list in the context of an airline merger. There also a number of pilots were dissatisfied with the integrated list (as has been the case in virtually *every* airline merger) and petitioned the CAB to set aside the list. The CAB found no basis for granting relief and dismissed the petition. The pilots did not appeal the CAB's order, but brought suit in the District Court in Chicago alleging that the integrated list resulted from unfair representation by their union, in violation of the "fair representation" requirements of the Railway Labor Act. The District Court dismissed the case and the Seventh Circuit Court of Appeals affirmed on the basis of the exclusive jurisdiction of the Courts of Appeals to review CAB orders. After noting the exclusive review provisions of 49 U.S.C. § 1486, the Court said:

> "The cases firmly establish the principle that where Congress has provided a statutory procedure for the review of an administrative order, such procedure is exclusive. A recent case much in point is Whitney National Bank v. Bank of New Orleans &

Trust Co, et al., 379 U.S. 411, 85 S.Ct. 551, 13 L.Ed. 2d 386.

* * * *

"The instant case is even stronger against plaintiffs on the point under discussion because here the statute lodges 'exclusive jurisdiction' in the reviewing court while in Whitney such jurisdiction was found by implication.

The Court went on to quote from a district court case in which the same questions had been raised and then concluded that the dismissal below had been correct:

"Another case much in point is Holman et al. v. Southern Airways, Inc., 5 Cir., 210 F.Supp. 407, wherein the District Court dismissed the complaint and denied the relief requested on the ground that the suit, couched in the terms of a violation of petitioners' contract rights and of their right to fair representation, was in reality an attempt to review a CAB order. Among other things the Court stated (page 410):

'This Court is convinced that it does not have jurisdiction to grant the plaintiffs the relief they seek, inasmuch as jurisdiction to review orders of the Civil Aeronautics Board is vested exclusively in the Circuit Courts of Appeals.'

* * * *

'It seems to this Court that if the plaintiffs are dissatisfied with the order of the Board, they could, pursuant to the provisions of 49 U.S.C.A. § 1486, of the Civil Aeronautics Act, procure a judicial review of the order * * * However, in the face of the expressed intention of the Congress to vest exclusive jurisdiction in the various Courts of Appeals to review orders of the Civil Aeronautics Board, this Court feels that any relief, injunctive or otherwise, must be had either from such Courts of Appeals or from

> the administrative agency in whose jurisdiction the proceedings originated—in this case, the Civil Aeronautics Board.' "
>
> * * * *
>
> "The conclusion is inescapable that plaintiffs sought a review of the final order entered by CAB on April 24, 1964. Stated otherwise, their action constitutes a collateral attack upon such order. As we have shown, this is not permissible under the law. For this reason the District Court properly dismissed the complaint."

The Sixth Circuit Court of Appeals following *Oling* in the very recent case of *Kesinger* v. *Universal Airlines, Inc., supra*, In the *Kesinger* case also the plaintiff alleged a violation of the duty of fair representation under the Railway Labor Act, just as the plaintiffs have here in the *Carey* case. There the court said:

> "The appellants have alleged that the union has engaged in conduct that breaches its duty of fair representation. ALPA asserts that even if these allegations are true, they would constitute a breach of the labor protective provisions of the merger, and consequently the appellants' remedy must lie, if at all, before the CAB. Oling v. Air Line Pilots Ass'n, supra.
>
> "Upon the authority of Oling v. Air Line Pilots Association, supra, and for reasons which we believe to be consistent with the statutory scheme of the Federal Aviation Act (49 U.S.C. § 1301 et seq. (1971)), we conclude that the appellants' exclusive remedy was to appeal the CAB's denial of the relief sought to a court of appeals."

The reason that the exclusive jurisdiction of the CAB and the Courts of Appeals must be maintained, *even when violations of other statutes are alleged*, was well-stated by the District Court in the *Hyland* case:

> "This important area of the total complex of merger considerations cannot be subject to independent scrutiny and interference by the courts pursuant to a separate statutory scheme. *The parties affected by the CAB merger order cannot be required to answer in different forums at different times on different charges for actions taken under the CAB merger umbrella.* Were this court to hear this case, it would be directly entering an area over which the CAB has properly reserved jurisdiction; were the relief prayed for to be granted here, the orders and interests of the CAB might be undermined. Congress cannot have intended such a collision. This is the thrust of Pan American and § 414. See Brotherhood of Locomotive Engineers v. Chicago & North Western Railway Co., [46 LC ¶ 18,125] 314 F.2d 424, 431-32 (8th Cir. 1963). The CAB must be permitted to consider the charges of this complaint in the total context of the merger and in light of the public interest which it is charged with protecting under § 408 [49 U.S.C. § 1378]" (emphasis added)

The reasoning of the court in *Hyland* was, in turn, based on this Court's rationale in *Pan American World Airways, Inc.* v. *United States*, 371 U.S. 296 (1963). In that case this Court explained the necessity of exclusive jurisdiction to avoid collisions of statutory schemes. Referring to that decision, the *Hyland* court said:

> "The Court based its decision on several traditional exclusive jurisdiction arguments. The matters in issue were held to be 'basic in this regulatory scheme.' The Court said that 'the acts charged in this civil suit as antitrust violations are precise ingredients of the Board's authority in granting, qualifying, or denying certificates to air carriers. . . .' 371 U.S. at 305. The Court was concerned with the fact that 'if the courts were to intrude independently with their construction of the anti-trust laws, two regimes might collide.' 371 U.S. at 310.

> 'It would be strange, indeed, if a division of territories or an allocation of routes which met the requirements of the "public interest" as defined in § 2 (of the Aviation Act) were held to be anti-trust violations. It would also be odd to conclude that an affiliation between a common carrier and an air carrier that passed muster under § 408 should run afoul of the anti-trust laws.' 371 U.S. at 309."

The petitioners have ignored and failed to even attempt to distinguish the above cases which dispose of all of petitioners' arguments. Nevertheless, the law is clear and the petitioners have no case for the grant of a petition for certiorari. All of their complaints are with respect to the compilation of the integrated seniority list. The CAB and the Courts of Appeal on review, have exclusive jurisdiction of these complaints. This exclusive jurisdiction may not be sidestepped by alleging violations of various federal statutes and the "jurisdictional" arguments raised by petitioners clearly are inapplicable.

CONCLUSION

For the reasons discussed above, Delta prays that this Court will not issue a writ of certiorari in the above cases.

Respectfully submitted,

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